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8 GREYHOUND LINES, INC.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 EDWARD DAVIS, an individual

13 Plaintiff,

14 v.

15 GREYHOUND LINES, INC., a  
16 Delaware corporation; and DOES 1-10,  
inclusive,

17 Defendants.

Case No. 5:17-CV-00600

**DEFENDANT GREYHOUND LINES,  
INC.'S NOTICE OF REMOVAL TO  
FEDERAL COURT**

[Filed concurrently with Declarations of  
LaKita Williams and David Raizman;  
Certificate of Interested Parties and  
Corporate Disclosure Statement; and Civil  
Cover Sheet]

Complaint Filed: February 24, 2017  
Trial Date: None Set

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA, AND TO PLAINTIFF AND  
HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that defendant Greyhound Lines, Inc. (“Defendant”) hereby removes this action from the Superior Court of the State of California for the County of San Bernardino (the “State Court”) to the United States District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

**I. TIMELINESS OF REMOVAL**

1. On February 24, 2017, plaintiff Edward Davis (“Plaintiff”) filed an unverified Complaint in the State Court, commencing the action entitled *Edward Davis v. Greyhound Lines, Inc.*, Case No. CIVDS 1703304. A true and correct copy of the Complaint is attached as Exhibit “A” to this Notice of Removal.

2. The Complaint asserts a claim for Violation of the Unruh Civil Rights Act, California Civil Code § 51, *et seq.* (“Unruh Act”).

3. Defendant’s registered agent for service of process was served with the Complaint on February 27, 2017. A true and correct copy of the documents served on Defendant’s registered agent is attached to this Notice as Exhibit “B.”

4. On March 24, 2017, Defendant filed its Answer to Plaintiff’s Complaint. A true and correct copy of Defendant’s Answer to the Complaint is attached to this Notice as Exhibit “C.”

5. A defendant in a civil action has thirty (30) days from the date it is served with a summons and complaint in which to remove the action to federal court. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). As Defendant’s registered agent for service of process was served with the summons and Complaint on February 27, 2017, this Notice of Removal is timely. 28 U.S.C. § 1446(b).

**II. REMOVAL IS PROPER BECAUSE THIS COURT HAS DIVERSITY JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.**

**A. Diversity of Citizenship**

1. For diversity purposes, an individual is a “citizen” of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). An individual’s domicile is the place he or she resides with the intention to remain or to which he or she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

2. Plaintiff alleges that he was at all relevant times, and still is, a resident of the State of California. (*See* Complaint ¶ 4). Thus, Plaintiff is a citizen of California for purposes of determining diversity jurisdiction.

3. “A corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” 28 U.S.C. § 1332(c). The United States Supreme Court established the test for determining a corporation’s principal place of business for purposes of diversity jurisdiction in *Hertz Corporation v. Friend*, 130 S.Ct. 1181 (2010). The Supreme Court held that the “‘principal place of business’ is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.” *Id.* at 1184. The Court further clarified that the principal place of business is the place where the corporation “maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination.” *Id.*

4. Defendant is incorporated in Delaware and maintains its principal place of business in Texas, where its officers direct, control, and coordinate the corporation’s activities. (Declaration of LaKita Williams (“Williams Decl.”) ¶ 3). Thus, Defendant is a citizen of Delaware and Texas for purposes of determining diversity jurisdiction.

5. Although Plaintiff has named “Doe” defendants, the citizenship of fictitiously-named “Doe” defendants is disregarded for purposes of removal.

1 U.S.C. § 1441(a); *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir.  
 2 1987). As Plaintiff and Defendant are citizens of different states under the  
 3 applicable legal standards, complete diversity exists in this case.

4 **B. Amount-In-Controversy**

5 1. In order to show that the amount in controversy requirement is satisfied,  
 6 Defendant need only demonstrate, by a preponderance of evidence, that Plaintiff's  
 7 claims meet the jurisdictional minimum. 28 U.S.C. § 1446(c)(2)(B). In determining  
 8 whether the jurisdictional minimum is met, the Court is entitled to and should  
 9 consider all recoverable damages sought by Plaintiff, including compensatory  
 10 damages, emotional distress damages, punitive damages, statutory penalties, and  
 11 attorneys' fees. *See Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S.  
 12 333, 347-48 (1977), *superseded on other grounds*; *Galt G/S v. JSS Scandinavia*, 142  
 13 F.3d 1150, 1155-56 (9th Cir. 1998); *Anthony v. Security Pac. Fin. Servs., Inc.*, 75  
 14 F.3d 311, 315 (7th Cir. 1996). In addition, the Court may consider the value of  
 15 nonmonetary relief sought (28 U.S.C. § 1446(c)(2)(A)(i)) and aggregate claims for  
 16 monetary and nonmonetary relief brought by a single plaintiff against a single  
 17 defendant. *See Bank of Calif. Nat'l Ass'n v. Twin Harbors Lumber Co.*, 465 F.2d  
 18 489, 491 (9th Cir. 1972) (noting "aggregation is permitted when 'a single plaintiff  
 19 seeks to aggregate two or more of his own claims against a single defendant.'");  
 20 *Wolde-Meskel v. Vocational Instruction Project Community Services, Inc.*, 166 F.3d  
 21 59, 62 (2d Cir. 1999) (same). Ultimately, the removing defendant meets its burden  
 22 of establishing the jurisdictional minimum amount in controversy if it establishes  
 23 that it is "more likely than not" that the amount in controversy exceeds \$75,000.  
 24 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

25 2. Here, based on the Unruh Act's recovery scheme and Plaintiff's theory  
 26 of recovery as set forth in his Complaint, it is clear that the aggregate of monetary  
 27 and nonmonetary relief at issue in this case exceeds \$75,000.

3. Monetary Damages: Generally, “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy,” subject to certain exceptions, such as nonmonetary relief, discussed below. *See* 28 U.S.C. § 1446(c)(2). In this regard, Plaintiff’s alleged amount of monetary damages -- *i.e.*, up to \$74,999 (Complaint ¶ 24 [alleging monetary recovery that “shall not exceed \$74,999”]) -- nearly satisfies the amount in controversy requirement on its own. *See, e.g., Brown v. Citibank USA, N.A.*, 2014 U.S. Dist. LEXIS 158059, \*4-\*8 (C.D. Cal. Nov. 7, 2014) (interpreting the plaintiff’s alleged damages of “no more than \$75,000” as an amount in controversy of up to, but not in excess of, \$75,000); *Jackson v. Specialized Loan Servicing, LLC*, 2014 U.S. Dist. LEXIS 154837, \*25-\*26 (C.D. Cal. Oct. 31, 2014) (same). Further, while Defendant disputes any liability in this case, a review of the damages potentially recoverable under the Unruh Act and Plaintiff’s theory of liability, which involves repeating claims and alleged ongoing violations by Defendant for months, demonstrates that the amount of monetary damages sought by Plaintiff in the Complaint satisfies the “good faith” requirement for purposes of removal under 28 U.S.C. § 1446(c)(2).

4. The Unruh Act allows for recovery of a statutory minimum of \$4,000 “for each and every offense” of its provisions. Cal. Civ. Code § 52(a). “[E]ach offense’ is each time the plaintiff visits the non-compliant place of public accommodation *or* each specific instance in which the plaintiff is deterred from attempting to visit.” *Molski v. Rapazzini Winery*, 400 F. Supp. 2d 1208, 1211-1212 (N.D. Cal. 2005) (emphasis added), *citing Arnold v. United Artists Theatre Circuit, Inc.* 866 F. Supp. 433 (N.D. Cal. 1994); Cal. Civ. Code § 55.56(b); *see Feezor v. Del Taco, Inc.*, 431 F. Supp. 2d 1088, 1090 (S.D. Cal. 2005), *citing Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 847 (9th Cir. 2004); *Arnold*, 866 F. Supp. at 439.

5. Plaintiff alleges he has not only experienced “multiple” past violations, but that he continues to be deterred from accessing Defendant’s website and “visiting

Defendant's bus departure locations" on a regular, ongoing basis. (Complaint ¶¶ 4, 16). Specifically, Plaintiff alleges:

- a. "The access barriers on greyhound.com have caused a denial of Plaintiff's full and equal access *multiple times in the past*, and *now deter Plaintiff on a regular basis* from accessing Defendant's website." (Complaint ¶ 4 [emphasis added]).
- b. "Due to Defendant's failure and refusal to remove access barriers to greyhound.com, Plaintiff and other blind and visually impaired individuals have been and *are being denied* equal access to the Greyhound bus depot locations and to the other services, including bus schedules, offered to the public through greyhound.com." (Complaint ¶ 12 [emphasis added]).
- c. "Despite *several attempts* to use greyhound.com since December 2016, the numerous access barriers contained on Defendant's website have denied Plaintiff's full and equal access, and *Plaintiff continues to be deterred on a regular basis* from accessing Defendant's website." (Complaint ¶ 16 [emphasis added]).
- d. "Defendant is violating [the Unruh Act], in that Defendant is denying visually-impaired customers the services provided by greyhound.com. *These violations are ongoing.*" (Complaint ¶ 19 [emphasis added]).

6. Given Plaintiff's allegation that he has visited Defendant's website and experienced purported access barriers on "several" occasions, and that he has been continuously deterred from accessing the website on a "regular" and "ongoing" basis for approximately four months ("since December 2016"), Plaintiff clearly is seeking to demonstrate grounds for recovery based on numerous individual "offenses." At \$4,000 per offense, Plaintiff certainly seeks, at the very least, \$8,000 in statutory

1 damages.

2 7. Attorneys' Fees: Moreover, since attorneys' fees are recoverable as a  
 3 matter of right for prevailing parties under the ADA and Unruh Act, the Court may  
 4 also consider such fees when determining the amount in controversy. Cal. Civ. Code  
 5 § 52(a); *see Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir. 1998)  
 6 (“[W]here an underlying statute authorizes an award of attorneys’ fees, either with  
 7 mandatory or discretionary language, such fees may be included in the amount in  
 8 controversy.”); *Miera v. Dairyland Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp.  
 9 2d 1004, 1010-1011 (N.D. Cal. 2002) (same). Significantly, courts in the Central  
 10 District have held that estimated fees during the litigation may be considered as part  
 11 of the amount in controversy. *See, e.g., Oganessian v. AT&T Mobility Servs., LLC*,  
 12 2014 U.S. Dist. LEXIS 132126, \*7 (C.D. Cal. Sept. 18, 2014) (holding that where an  
 13 underlying statute permits recovery of attorneys’ fees, “the Court does not merely  
 14 consider those fees which have already incurred; rather, it looks to the amount that  
 15 can be reasonably estimated” when determining the amount in controversy); *Sawyer*  
 16 *v. Retail, DATA, LLC*, 2015 U.S. Dist. LEXIS 57113, \*6-\*7 (C.D. Cal. Apr. 29,  
 17 2015) (“[Plaintiff’s] claim for fees is authorized by Cal. Gov’t Code § 12965(b), and  
 18 thus her post-removal attorneys’ fees are part of the ‘amount at stake’ in the  
 19 action.”); *Sasso v. Noble Utah Long Beach, LLC*, 2015 U.S. Dist. LEXIS 25921, \*11  
 20 (C.D. Cal. Mar. 3, 2015) (same).

21 8. Based on Defendant’s counsel’s extensive experience with federal and  
 22 state accessibility litigation, it is reasonably plausible that the combined alleged  
 23 damages and expected attorneys’ fees in this case exceed \$75,000 (though Defendant  
 24 disputes all claims for damages and attorneys’ fees). (Declaration of David Raizman  
 25 ¶ 2).

26 9. Nonmonetary Damages: The Court may also consider the cost of  
 27 nonmonetary relief alleged in Plaintiff’s Complaint. 28 U.S.C. § 1446(c)(2)(A)(i).  
 28 In addition to monetary damages, Plaintiff seeks preliminary and permanent



1 injunctive relief “enjoining Defendants [*sic*] from violating” Unruh, and “requiring  
2 Defendant to take the steps necessary to make greyhound.com readily accessible to  
3 and usable by visually-impaired individuals . . . .” (Complaint, Prayer for Relief ¶¶  
4 1, 2; *see* Complaint ¶ 22). In the context of single-plaintiff cases, the Ninth Circuit  
5 has adopted an “either viewpoint” rule such that “the test for determining the amount  
6 in controversy is the *pecuniary result to either party which the judgment would*  
7 *directly produce.*” *In re Ford Motor Co./Citibank (South Dakota), NA*, 264 F.3d  
8 952, 958 (9th Cir. 2001) (emphasis added); *see Sanchez*, 102 F.3d at 405 n. 6  
9 (observing how the 9th Circuit “rejected the ‘plaintiff-viewpoint’ rule, which states  
10 that courts attempting to determine the value of a claim for purposes of the amount in  
11 controversy requirement should look only to the benefit to the plaintiff, rather than to  
12 the potential loss to the defendant.”), *citing Ridder Bros, Inc. v. Blethen, et al.*, 142  
13 F.2d 395, 398 (9th Cir. 1944) (noting “if the value of the thing to be accomplished  
14 [is] equal to the dollar minimum of the jurisdictional amount requirement to anyone  
15 concerned in the action, then jurisdiction [is] satisfied.”). Accordingly, to the extent  
16 the cost of remedying the alleged issues with Defendant’s website, combined with  
17 Plaintiff’s alleged monetary damages, exceeds \$75,000, the amount in controversy  
18 requirement is met.

19       10. There is little doubt the cost of implementing the changes sought in  
20 Plaintiff’s Complaint could meet the minimum amount in controversy for removal.  
21 Plaintiff’s Complaint notes several alleged types of barriers on Defendant’s website,  
22 including: (1) “the lack of Alternative Text, or a text equivalent;” (2) “Redundant  
23 Links where adjacent links go to the same URL address which results in additional  
24 navigation and repetition for keyboard and screen reader users;” and (3) “Missing  
25 form labels which presents a problem because if a form control does not have a  
26 properly associated text label, the function or purpose of that form control may not  
27 be presented to screen reader users.” (Complaint ¶ 14). Merely assessing a website  
28 is a costly, complex, and labor intensive process, which includes examining the



1 website at the code level, performing an initial accessibility audit, quality assurance  
2 testing, and a subsequent verification audit. (Williams Decl. ¶ 4). To the extent  
3 barriers exist, there are additional costs associated with remediation of the alleged  
4 barriers. (*Id.*) The total process easily can exceed \$75,000.00 on its own. Thus,  
5 based on the anticipated remediation cost, a conservative estimate of Plaintiff's  
6 demand for statutory damages, and the potential attorneys' fees sought in this action,  
7 it is clear that the \$75,000 amount in controversy easily is met in this case.

8 **III. THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1446 ARE**  
9 **SATISFIED.**

10 1. In accordance with 28 U.S.C. §1446(a), this Notice of Removal is filed  
11 in the District in which the action is pending. The San Bernardino County Superior  
12 Court is located within the Central District of California. Therefore, venue is proper  
13 in this Court because it is the "district and division embracing the place where such  
14 action is pending." 28 U.S.C. § 1441(a).

15 2. In accordance with 28 U.S.C. §1446(a), copies of all process, pleadings,  
16 and orders served upon Defendant are attached as Exhibits to this Notice.

17 3. In accordance with 28 U.S.C. §1446(d), a copy of this Notice is being  
18 served upon counsel for Plaintiff, and a notice will be filed with the Clerk of the  
19 Superior Court of California for the County of San Bernardino. Notice of  
20 Compliance shall be filed promptly afterwards with this Court.

21 4. As required by Federal Rule of Civil Procedure 7.1 and Local  
22 Rule 7.1-1, Defendant concurrently filed its Certificate of Interested Parties and  
23 Corporate Disclosure Statement.

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1           5.       Based on all of the matters discussed above, Defendant removes the  
2 above-captioned action to the United States District Court for the Central District of  
3 California.

4  
5 DATED: March 29, 2017

Respectfully submitted,

6 OGLETREE, DEAKINS, NASH, SMOAK &  
7 STEWART, P.C.

8  
9 By: /s/ Christopher F. Wong  
10 Christopher F. Wong

11 Attorneys for Defendant  
12 GREYHOUND LINES, INC.

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